

The Chartered Surveyors' Institution

(Incorporated by Royal Charter),

12, GREAT GEORGE STREET, WESTMINSTER, S.W.

PATRON:

HIS MAJESTY KING GEORGE VI.

TRANSACTIONS

VOL. LXX.

SESSION 1937-38.



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Past-Presidents.

1868 *John Clutton*
 1870 *Richard Hall*
 1872 *Edward Norton Clifton*
 1874 *Thomas Huskinson*
 1876 *Edmund James Smith*
 1878 *William Sturge*
 1880 *Edward Ryde*
 1883 *Thomas Smith-Woolley*
 1885 *Edward P Anson*
 1886 *William James Beadel, M.P.*
 1888 *Elias Pitts Squarey*
 1890 *Robert Collier Driver*
 1892 *Charles John Shoppee*
 1894 *Thomas Chatfeild Clarke*
 1895 *Daniel Watney*
 1897 *Christopher Oakley*
 1898 *Robert Vigers*
 1899 *Thomas Miller Rickman*
 1900 *John Shaw*
 1901 *Sir John F. L. Rolleston*
 1902 *Arthur Vernon*
 1903 *Albert Buck*
 1904 *Herbert Thomas Steward*
 1905 *Charles Bidwell*
 1906 *George Langridge*
 1907 *Thomas Taylor Wainwright*
 1908 *Howard Martin*
 1909 *Sir Alexander Rose Stenning*

1910 *Leslie Robert Vigers*
 1911 *SIR EDGAR HORNE, BT.*
 1912 *Hon. Edward Gerald Strutt, C.H.*
 1913 *W. Edward Woolley*
 1914 *Howard Chatfeild Clarke*
 1915 *JOHN HENRY HANSON*
 1916 *Rt. Hon. George Francis Stewart*
 1917 *ARTHUR LYON RYDE*
 1918 *SIR JOHN HUBERT OAKLEY, G.B.E.*
 1919 *Andrew Young*
 1920 *John Willmot*
 1921 *Joseph Henry Sabin*
 1922 *John McClare Clark*
 1923 *Sir James Inglis Davidson*
 1924 *SIR EDWARD SAVILL, O.B.E.*
 1925 *John David Wallis*
 1926 *DENDY WATNEY*
 1927 *Edward Samuel Cox*
 1928 *Charles Browning Fisher, C.B.E.*
 1929 *CHARLES HERBERT BEDELLS*
 1930 *ERNEST HOLTHAM LEEDER*
 1931 *JOHN EVANS BIDWELL*
 1932 *CHARLES GERALD EVE*
 1933 *PERCIVAL FOX TUCKETT*
 1934 *ALAN ARNOLD*
 1935 *HARRY MERRIDEW STANLEY*
 1936 *JOHN MEDOWS THEOBALD*

(The names of those deceased are printed in italics.)

AFFILIATED SOCIETY.

The Chapter of South Africa Quantity Surveyors (within The Institute of South African Architects).

Secretary:

J. S. LEWIS, 84, Walter Wise's Building, Joubert Street, Johannesburg.

Transactions *of* The Chartered Surveyors' Institution

SESSION 1937-1938.

FIRST ORDINARY GENERAL MEETING OF THE
SESSION 1937-38.

*Held at the Chartered Surveyors' Institution, Monday,
8th November, 1937.*

Mr. ROBERT COBB (President) in the Chair.

Prior to the meeting the PRESIDENT, on behalf of the members, placed a wreath of Flanders poppies at the foot of the Institution's Memorial to the memory of the members, students and examinees who had fallen in the Great War, the members present standing at attention while " The Last Post " and " The Reveille " were sounded by a bugler of the 1st Battalion the Grenadier Guards.

NEW MEMBERS.

The following new members were received by the
PRESIDENT prior to the meeting and signed the Register:—

Fellows :

BROWN, HARRY VICTOR

SHANNON, DAVID

*Professional Associates :*ANTHONY, JOHN VICTOR
CALDECOTT

ANDERSON, JOHN BASKERVILLE

ANDERSON, GEOFFREY REX

AUSTIN, JAMES GEORGE REX

BATEMAN, GEOFFREY FRANK

BELL, DANIEL

CAUSTON, JACK EDWARD

CHRISTOPHER, WILLIAM

DONOVAN, ERIC ARTHUR

DOWNING, CYRIL WILFRID
WARMINGTON

GODFREY, ALFRED TREVOR

GOLD, DEREK

GRAVES, STEPHEN DOWER

GREEN, ARTHUR EDWARD
CHARLES

HARRIS, HUBERT CHARLES

HEPBURN, JOHN ALASTAIR

HUGHES, WILLIAM

HYNARD, FREDERICK RALPH

JEFFERIS, GEORGE MORREY

KITCHEN, REGINALD THOMAS

KOMLOSY, DENIS HERBERT

LUDGATER, REGINALD ARTHUR

LUMBY, TOM

MATHEWS, GEORGE WALTER

MERRIMAN, CLAUDE JOHN

MICHELSEN, WILLIAM HALY-
BURTON COCHRANE

MOORE, RICHARD

MORGAN, REGINALD THOMAS

MOUNTNEY, ARTHUR DONALD

PARRINDER, ERIC REGINALD

PETTINGALE, HAROLD

RICHARDSON, HUGH

RICKCORD, JOHN VALENTINE
HALL

ROGERS, ALEXANDER GWYNNE

ROSE, LEONARD FREDERICK

SALMON, ALBERT JAMES

SEGAR, DENIS SAMUEL

SMITH, EDGAR MORLEY

SNOWDEN, GEORGE MACLEAN

SPRIGGS, ERNEST SAMUEL

SPYER, SIDNEY CLIFFORD

STOREY, ERNEST REGINALD

STURROCK, JAMES LACHLAN

TAYLOR, ARTHUR ROSS

UPTON-KEMP, ERIC

WAKELIN, PERCY GEOFFREY

WEARING, THOMAS

WEBB, JOHN CHARLES

WHITE, NATHANIEL STANLEY

WILSON, EVERARD KINGSLEY

WOODWARD, ARTHUR NORMAN

The PRESIDENT then delivered the following Opening Address:—

PAPER NO. 578.

PRESIDENT'S OPENING ADDRESS.

I have always been told, I have always felt, and now I am certain that perhaps the most difficult task of the year that falls to the holder of my office is the President's Opening Address. Year after year I have admired the knowledge and the learning of my predecessors and the variety of the subject matter upon which they have addressed you on corresponding occasions in the past. I have even had the audacity to wonder if the whole field of our profession is not too big for any one President to attempt to range ; and, if so, whether it is not best—in my own case at any rate—to walk in the paths which I know. For this reason I have decided to confine my address to some of the agricultural aspects of our professional work. Of its other aspects I hope to hear and learn more during my year of office.

I have sometimes wondered, too, whether an address might not be more valuable if given towards the end of the Presidential year, with all the experience which that office brings. The by-laws, however, require otherwise, doubtless because the end of the year is the time of retrospect, and because the President is expected to turn his eyes to the future rather than to the past on this particular occasion.

I am no architect by profession, and I shall stake no claim as an architect of our fortunes during my year as President. As a surveyor, however, I shall endeavour to see that the cost of repair is kept as light as possible. As an agriculturist, who naturally turns to field and farm for

his metaphor, I only hope that my time as President, if not remarkable for its bountiful crops and remunerative prices, may at least have its value as a "fallow" in the Presidential rotation and accumulate fertility for the benefit of the succeeding years. Modest, diffident even, though that may sound, I am deeply proud that the honour of election as President should have fallen upon myself ; yet I cannot but feel that the choice, in part at any rate, was due to the memory of my father, who with the work he did and the love he bore for the Chartered Surveyors' Institution was overtaken by death at the last stage of his ascent to the office I now occupy.

THE STATE OF AGRICULTURE.

"The more I think about agriculture the more I am amazed at how a country like this can contemplate the decay of agriculture, for when that begins it is the beginning of the end of a nation." So wrote an educationist only a few weeks ago.

We are getting industrially minded. Agriculture is no longer an occupation ; it is an industry, which should be regarded and organised as such, not only for its financial benefit, but also for the health, character and safety of our people.

The well-being of the country estate is inseparably connected with the well-being of the farming industry, and nobody, I am afraid, could fail to admit that all is not well to-day on the agricultural front. Spokesman and writers by the score have said that agriculture is the all-important industry of the country, but it remains the shuttlecock of vested interests in other industries. If what I am about to say has been said or written many times before, you may call me guilty of platitude, but guilty I shall not plead. Unpleasant truths need to be repeated, and what is platitude but the unpleasant repetition of truth?

Although the value of agricultural estates may to-day be influenced largely by the market for investments other than

in land, the fundamental factor of value is still, as it must always be, the return in the shape of rent that a farmer is able to pay. That in turn depends on the difference between the sale price of the farmer's produce and his expenses in raising it. Whether the estate belong to a hereditary owner, a university college or a financial trust, the fact remains that the value of the investment depends fundamentally on the welfare of the farming community.

In my younger days, when the farmer relied on himself alone to make ends meet, transport of all kinds was less efficient and there was less to fear from the competition of foreign imports. At the same time he was free to bargain for his labour. To-day, however, the price he will get for his produce is still uncertain, while his greatest item of expenditure—labour—is regulated against him to an irreducible statutory minimum. While the price obtainable generally for agricultural produce is about 30 per cent. higher than in 1914, the cost of labour on Wages Board figures alone is about 80 per cent. higher, and, to my personal knowledge, wage increases of 100 per cent. on 1914 are not unusual.

AGRICULTURAL LABOUR.

Nor are financial considerations the only aspect of the question. In spite of higher wages, the quality of labour, I am sorry to say, has deteriorated with few exceptions. If that factor also be taken into account, the economic value of labour to the farmer to-day is probably less than half what it was a generation ago. That is a serious matter for the farmer when it is recalled that his labour bill represents between two-fifths and one-half of the expenditure on an average farm.

One hears the shortage of agricultural labour attributed to this cause or that ; that among the youth of the villages the call of the land has yielded to the attractions of town labour with its higher nominal wages and its greater social opportunities ; that the wages of industrial labour are

higher, even when the perquisites and amenities enjoyed by the agricultural labourer are taken into account ; that parents themselves encourage their sons to leave the fields for the factory bench or the office stool ; and that a genteel teaching policy on the part of the education authorities, unconsciously perhaps, regards agriculture as merely bucolic, with the result that children are turned against it at an impressionable age.

All these factors, no doubt, have contributed towards the flight of labour from the land. Fortunately, however, there is another side to the picture. For the labourer the village is no longer remote from urban diversions, nor need his short evenings be empty of intellectual stimulation. The motor-coach and the wireless have changed all that. With the national drive for health and physical fitness parents may be educated to realise that a son in corduroys with bright eyes and healthy cheeks may be richer, even though his pay is less, than his pasty-faced brother in worsteds. And perhaps, though I speak with deference to educationists, it may not even now be altogether forgotten that an education or an educational policy which, because of a misplaced superciliousness to agriculture, ignores or represses the instinctive love of children for all forms of nature, is bad educationally as well as bad from the standpoint of agricultural economics. I give full credit for the immensely valuable work which has been done by agricultural colleges for the improvement of agricultural knowledge and for the instruction, excellent in its way, which is provided by farm institutes and similar organisations. But I should like to see far more done for the potential agricultural employee in his early years at school by means of a policy which will encourage the child's instinct for knowledge about natural things and draw it out into practical channels.

There remains the economic factor—that of wages. If agricultural wages compare unfavourably with those of industry, as I am afraid they do, a man cannot be blamed for choosing industrial employment. Industry, however,

is in a better position than the farmer to adjust its prices to its labour costs, and, that being so, it seems clear that something must be done to secure a price for the farmer's produce which will enable him to compete for labour, and in doing so to arrest the flight of labour from the land.

THE DEAR FOOD BOGEY.

It is here, however, that one is met by the anti-protectionist with his cry of "higher prices, dearer food"—a cry familiar at the hustings, but one which raises a real bogey nevertheless. Fortunately this is neither the place nor the occasion to discuss that time-worn slogan; but as an agriculturist I am thankful for the growing realisation among townspeople that the farmer is entitled to his livelihood; that something must be done to overcome the discrepancy between the prices of home produce and its foreign, subsidised, cheap-labour equivalents; and that if cheap food is an advantage it is enjoyed at the risk of the farmer's extinction, of his land becoming a distressed area of docks and thistles, and of starvation for our urban millions if war befall.

THE GOVERNMENT'S FERTILITY SCHEME.

I am thankful, also, that our Government are alive to that aspect of the question. I agree entirely with the Minister of Agriculture that direct financial assistance for the production and storage of food would be a mistake if adopted as a permanent policy in order to prepare for what we hope is only a contingency. A state of emergency, fortunately, does not exist, and I hope never will. Until it does, it would be foolish to initiate an expensive policy which could only result in the over-production of food. The Government, therefore, are right in their recent measures for encouraging farmers to improve the fertility of their land so that it is ready for food production if the need arises; in other words, to insure against a possible risk in preference to acting as though danger were upon us. Rome was not

built in a day ; nor can corn be grown in a day—an axiom that is often forgotten by those unfamiliar with the agricultural cycle.

BAD FARMING A NATIONAL DANGER.

But, I would add, the land must be kept, as well as put, in condition for food production if it is not to fail us in an emergency. Bad cultivation, bad farms and bad farmers must be eliminated, must be treated as a danger to the community, if the full benefits of the Government fertility scheme are to be realised. The landlord should be released from his fear that if he gives notice to quit for bad farming he will be left indefinitely with a farm in hand. And, though I say it with bated breath, I sometimes think that county agricultural committees, when applications for certificates for bad farming are brought before them, might reserve some of their sympathy for the land and not all of it for persons. Too often, I am afraid, the lion's share of sympathy goes to the outgoing tenant at the expense of the incomer, and therefore also at the expense of the future welfare of the land. That is an attitude which I suggest cannot be reconciled with the necessity, now recognised by the Government, for the land of this country to be put and kept in good heart against the risk of emergency.

INDIVIDUALISM.

I am not a believer in " trust " farming by large financial corporations. I still prefer to have faith in the individuality and self-reliance of the British farmer. Individualism, unfashionable though my opinion may be, needs encouragement in all walks of life, and especially in agriculture, where the tendency to think and act in herds would be retrograde and deplorable. But if individualism and self-reliance are to be saved for agriculture, the days when there was fair play for agriculture, when it was not the victim of uncontrollable circumstances, must be restored. Individualism is not bad because it falters in its fight against

currency inequalities, subsidies and underpaid foreign labour. It has served us well in the past and will do so again if helped against its heavy odds rather than abandoned in favour of some un-English system of large-scale official or financial control.

TENANT-RIGHT VALUATIONS.

I cannot leave the subject of agriculture without saying something about the all-important subject of tenant-right valuation—the link which binds an incoming tenant to, and severs an outgoing tenant from, his landlord and the land, and which is of considerable financial consequence as the basis of tenant's capital on entering or leaving a farm. To me the subject is of an absorbing interest, which increases yearly with new discoveries in natural, chemical and mechanical science, and brings with it a continuous flow of new problems for solution by the tenant-right valuer. There is a feeling in many quarters that the old country customs in valuation should be done away with and replaced by a single and uniform method. My own view is that that would be wrong and in practice quite impossible to carry out. The latter-day mania for standardisation and uniformity can be carried too far, and particularly so in this instance, where, apart from the charm that lies in variety, differences in customs of country can be shown on a critical analysis to be based on a logical foundation.

Here I may remind you that the subject matter of an agricultural valuation, though commonly known as “tenant-right,” may as often as not call for a financial assessment of “tenant-wrong.” That aspect is important if the farming and the capital value of an agricultural estate is to be maintained at the desired level.

The main items of “tenant-wrong” are dilapidations to land and to buildings. The former can fairly be described as always the fault of the outgoing tenant, and there is no reason to my mind why any leniency should be shown him ; but it is seldom that sufficient allowance is made in order

to restore the land to that state of fertility which nature, or the tenancy agreement, requires.

It is sometimes said about tenant-right valuers—and I have just said it myself about county agricultural committees—that they are inclined to favour the outgoing tenant and to load the dice against the incoming tenant and the landlord. I do not propose to discuss the rights and wrongs of that accusation except to say that it represents a point of view which exists and in some quarters is strongly held. I shall content myself with recording that statement of fact and with the remark (which I know brings me upon dangerous ground) that the business of a valuer is to value and not to bargain. The old saying is still true that in tenant-right valuations the bad tenant always gets too much and the good tenant never enough.

I shall now turn for a moment to some practical points of detail which seem to me to be specially worthy of examination and discussion in the light of modern conditions. Time, however, and the occasion do not permit more than a bare and passing reference to each of them.

Dilapidations to Buildings.

As every agricultural valuer knows, the repair of farm buildings is a divided responsibility, the provision of materials devolving upon the landlord and of labour upon the tenant. Admittedly the want of repair is occasionally the fault of the landlord, either because he fails to keep his tenant up to the mark in the matter of repairs or does not supply the materials necessary to enable the tenant to carry out his obligations.

Any system of divided responsibility has obvious objections. I am not at all sure that it might not be better for the landlord to assume responsibility for all repairs, cost of labour included, so that the entire maintenance of the value of what, after all, is his own capital would be his business and his alone. The tenant would then be charged an extra rent in consideration of relief from his obligation to provide labour, though the arrangement would not, of

course, relieve him from the duty of making good deliberate damage.

Some such arrangement, at any rate, would overcome the disadvantages of divided liability, and would impose upon the landlord the whole duty of seeing that the repairs were done at the proper moment. At present, unfortunately, it is too often a case of the landlord and the tenant leaving repairs to each other, with disastrous effect upon the equipment of farms generally.

Records.

Under the Agricultural Holdings Act the incoming tenant can be protected by a "record of the holding." To my mind, however, in practice and after the lapse of several years, the record is a useless document and in the interest of the upkeep of the buildings should never be made. Too often it is merely an excuse for landlords to evade the expense of repair at the proper time, with the consequence that in the end, unless the buildings are to disappear entirely, the cost of putting them into proper condition may be prohibitive.

Here I may suggest that in these days of portable buildings, Dutch barns and improved cleaning and threshing machinery, the upkeep of a large number of buildings for storage purposes is unnecessary, and farmsteads that were wanted fifty years ago are not wanted to-day, apart, of course, for stock purposes. Money might often be saved by demolition rather than repair.

Manurial Values.

There is, first of all, the question of the unexhausted value of feeding-stuffs and manures, and the advantages of the present tables for manures calculated on reviewed costs, as compared with the adoption of unit values for compound manures advocated by valuers in the north of England. I am inclined to think, personally, that the unit system is the more accurate in view of the numerous compounds which are on the market ; but it involves more time and trouble.

Stocktaking Valuations.

With regard to stocktaking, I would remark that an annual valuation is more important than ever before, with income tax at its present high level ; yet the majority of farmers fail to appreciate the necessity, to their great disadvantage.

Taxation in respect of Market Garden Operations.

It will be remembered that by Rule 8 of Schedule B of the Income Tax Act, 1918, the profits arising from land occupied as nurseries or gardens for the sale of produce shall be estimated according to the rules applicable to Schedule D, but shall be assessed and charged under Schedule B as profits arising from the occupation of lands. Some inspectors of taxes, on the decision in *Dennis v. Inland Revenue Commissioners*, 1935, are interpreting this rule to mean that any farmer who grows market garden crops such as potatoes, greens, &c., on an ordinary mixed farm in combination with corn and hay and the raising of stock, should be assessed under the rules of Schedule D and not Schedule B if such market garden crops are the predominant cultivation of the farm. That, to my mind, whatever may have been the facts in the *Dennis* case, is an unfair interpretation when generally applied. It results in the assessment of one farmer under Schedule D if market garden crops predominate, and his neighbour under Schedule B if they do not, although the two for all practical purposes may be carrying on a precisely similar business.

Agricultural Arbitrations : Lowther v. Clifford.

The case of *Lowther v. Clifford*, decided in the Court of Appeal in 1927, has an important bearing on agricultural arbitrations. It was held in that case that the landlord was not bound to go to arbitration under Section 16 of the Agricultural Holdings Act, 1923, in order to recover from the tenant the cost of certain road works, but could recover

in an action at law. The judgments of Lord Hanworth, M.R., and Lord Justices Scrutton and Sargant made it quite clear that the only differences and disputes which *must* be decided by arbitration under the Act are those in rights created by the Act and relating to cultivation, rotation of crops, the making of improvements, or in respect of the holding. It is as well to remember, therefore, that disputes between landlord and tenant on matters outside the particular scope of the Agricultural Holdings Act need not necessarily be settled by the special arbitration procedure laid down in Section 16 and the Second Schedule of that Act, but may be settled either by ordinary legal process or by reference to arbitration under the Arbitration Acts of 1889 and 1934. To avoid error, therefore, the form of reference to arbitration should be worded so as to provide for a reference to arbitration under both codes, and two separate awards may be necessary.*

The Claim for Disturbance.

And, lastly, I cannot help asking myself whether the time has not come for relaxing the conditions under which a landlord can avoid a claim for disturbance. The right to compensation for disturbance was first introduced by the Agricultural Holdings Act of 1906, and was considerably enlarged in the Agriculture Act of 1920 by way of counter-attack upon the raids of unscrupulous land speculators in the years after the War. In practice, however, the right to compensation for disturbance has had some bad results under the conditions now imposed. While in theory a landlord may avoid a claim on the ground of bad farming, in practice I find from my own experience that neither a county agricultural committee nor an arbitrator will grant a certificate in the landlord's favour unless the farm is, practically speaking, derelict. I find it difficult to believe

* Since this Address was written, I may say that the Institution has been asked by the Minister of Agriculture to attend a conference on this particular point.

that the disturbance claim could have been intended as a deterrent to riddance of the bad farmer, but I am afraid in many cases it has turned out to be so, with serious results to the land and its proper management.

ESTATE MANAGEMENT.

Personal Ownership.

This brings me to estate management, about which, as about agriculture, so much of sense and so much of nonsense has been said and written that it is difficult to avoid repetition or to voice a novel idea in the search for a solution of the problems which face us.

The management of agricultural estates in this country has been based through the years on the idea of individual ownership. May it long continue to be so. There is something, I admit, to be said for the ownership of land by trusts and financial corporations—a something which is largely financial and very little else. There is nothing at all, in my opinion, to be said for ownership by the State. Money and balance sheets, however, are to me but one side of the ownership question. I am a firm believer in individual ownership because of its fine tradition of service to the land of England and the race of squires which it has bred ; because of the high sense of responsibility which it inculcates in the owner to the great benefit of himself, his estate and the people who draw their living from it ; and because I believe that the personal and human relationships between man and man, whether landlord, tenant or labourer, are for the good of the countryside and would largely disappear in any general system of mass ownership, whether by the State or by large corporations. We have already seen in huge industrial amalgamations how the man is but a tiny cog in a great machine, as far removed as the moon from personal contact with the directors and shareholders who own the business. We do not want that, I say, in the business of estate ownership.

If the individual landlord remains loyal to his traditions

and responsibilities, I believe—and the fact that some have failed will not alter my belief—that tenants will continue to prefer him, as in my experience they now prefer him, to the soulless, grinding machine of large-scale proprietorship. Rightly or wrongly, I believe that whatever we might gain financially from any general disappearance of personal ownership would be dearly paid for by the sacrifice of a priceless asset to the life and amenities of our countryside and the traditions and character of our race.

Financial Aspects.

Let us glance now for a moment at certain aspects of estate management proper, assuming the existence of the two first essentials, namely, cheap capital and an agriculture which is reasonably remunerative.

The mansion-house and its immediate surroundings of garden and park are usually dependent on the owner's financial resources derived elsewhere than from his estate. The upkeep of the estate proper must be looked at from the standpoint of its potentialities for agriculture rather than for building or mineral development. The existence of the latter would of itself usually provide the necessary means of finance.

Capital Items : Farm Buildings.

Landlord's capital is urgently required not only for the upkeep but also for the adaptation of farm buildings to modern requirements. The cost of upkeep, you may say, is not capital expenditure ; yet when upkeep has been neglected for years, as inevitably it has been in many cases, the owner has in fact been living on capital and the cost of repair becomes a capital item. The necessity for adaptation arises partly from the often changing ideas of sanitary authorities as to the conditions in which healthy stock should be housed and their products handled, and partly from changes in farming methods and the introduction of new appliances. Thus, as I have said already, old

barns, threshing floors and other out-of-date equipment which it does not pay to keep can be abandoned and the buildings which housed them demolished or reduced in size.

Dairy Buildings.

Consideration of health admittedly require compliance with the various orders and regulations for dairy buildings. I cannot, nevertheless, resist the feeling that some uniform and generally applicable code in this respect might well be settled for the country as a whole. That, I think, would be preferable to the present state of affairs in which the standard of requirements is left to the discretion of small authorities and depends largely on the views of their particular sanitary inspector. It ought not to be impossible to evolve for the whole country a uniform model which would do something to remove the uncertainties that now beset owners and their agents because of differences in standards between neighbouring districts, and sometimes even in the same district when a change of sanitary inspector takes place.

The Possibilities of Light Construction.

I am well aware that an ordering of the conditions under which milk is produced for human consumption is not only essential for health, but must also be subject to change as medical knowledge of disease and its prevention advances. We have seen many changes in the last ten or twenty years, and we shall see as many or more in the next. That raises the question whether, when structural alterations are undertaken in order to comply with the sanitary requirements for dairy buildings, a more temporary form of construction—light concrete or timber, for example, instead of the more expensive bricks and mortar—ought not to be used.

Farm Cottages : The Tied System.

There is no less an urgent need for capital for the provision of agricultural workmen's cottages, in which

connection I should like to see far more advantage taken of the Housing (Rural Workers) Act. Whatever may be the merits or demerits of the tied cottage system, the fact remains that cottages are an indispensable item of farm equipment. In my opinion a certain number must be reserved for use as such, so that some, at any rate, may be saved for the agricultural labourer from the policeman, the council employee and the tired business man from town. Moreover, a farmer cannot make the best use of his farm if the supply of buildings is inadequate ; while from another standpoint the tied cottage is at least one factor, I suggest, which adds to the attractions of agricultural labour, and therefore helps in a small way to stem the flight from the land.

The Importance of Rent Maintenance.

Turning from the capital to the income and expenditure account of an estate, everything, as you know, depends on farm rents if a healthy position is to be maintained. Rents in their turn depend on a reasonably prosperous agriculture, to which I have already referred at some length. Assuming success in the attempt to break the vicious circle of depression, the landlord, for his part, can do justice to his land by ridding it of bad farming tenants, while his agent is free to see that covenants are enforced and the estate properly managed without the fear—a real one to-day—that another and better tenant may not be forthcoming. Greater care can be taken in the choice of tenants and in examining their qualifications as to capital, ability and experience, instead of, as I am afraid is too often the case to-day, catching at straws in the hope, though hardly the expectation, that the last state of the farm may not be worse than the first.

The responsible landlord owes it to his estate that maintenance of his rents shall be one of the first considerations, if only because it is from that source alone that the money for maintaining the raw materials of agriculture, namely,

the land and its buildings, can be drawn. Yet how often is a request for a reduction of rent the first resort of the tenant who has begun to slither down the slope of bankruptcy?

It seems to me that rent reduction, when not justified by the real rental value and considered merely as a means of temporary relief to the tenant, is a false policy for the landlord, weakening, as it must, his ability to maintain the raw materials of the industry with which his interests are so closely bound up. Nor can it do much to save a tenant from bankruptcy, seeing that rent on an average amounts to no more than one-tenth of his expenditure.

Taxation.

On the expenditure side of the estate account the chief items are rates, taxes, tithe and repairs. There is not much to be said about rates or tithe, in respect of which relief has already been given to agriculture. With regard to taxes, I should like, first of all, to acknowledge the courtesies which I, and no doubt also many of you, have received from H.M. Inspectors on many occasions. In dealing with them on behalf of the estates for which I act professionally, I have always found them reasonable and fair-minded men, who are prepared to meet me so far as it is proper for them to do so within the limits of their regulations, and my experience is that with an agent who takes the broad, fair and reasonable view much can be done to secure all permissible reliefs.

The Repairs Allowance.

As regards taxation generally, I suggest for the consideration of the revenue authorities that with the present trend of agricultural rents and the high price of building materials, the statutory allowance for repairs is nowadays not enough and should be substantially increased. I do not forget that additional relief for repairs can be recovered by means of the maintenance claim. The preparation of a

maintenance claim, however, is a puzzling and troublesome matter and is little understood by the small owner who cannot afford professional assistance.

On the axiom that taxation should be as simple as possible, and bearing in mind that considerable claims for maintenance can nearly always be substantiated, with the result that the Exchequer in any case has to pay in the end, there is a clear case in my contention for an increase in the statutory deductions which are allowed for the purpose of arriving at the net assessment to Schedule A.

Maintenance Claims.

I should like also to suggest that claims with respect to alterations to buildings undertaken in order to maintain the rent should be considered on their merits and without reference necessarily to the question whether the alterations were voluntary or carried out by order of the local authority. I have noticed a tendency to regard the latter as something of a *sine quâ non* for the allowance of a claim in respect of the cost of alterations.

Lastly I would strongly advise the landowner to leave the preparation of his maintenance claim to his agent, the person who, after all, is in the best possible position to meet the inspector of taxes and to speak from first-hand knowledge of the use to which the expenditure was put. An accountant or a solicitor could not speak with that direct personal knowledge, and it is no reflection on those professions to say that they are not, and would probably not claim to be, familiar with the intricacies of practical estate management and their bearing upon the preparation of a maintenance claim. Only recently, for example, I came across a case where an accountant had advised that no allowance could be claimed for the value of estate-grown timber when converted and used for repairs. As against that I, and you also no doubt, have always found that a fair value is allowed, and rightly so.

The Estate Timber Yard.

The question of repairs is a large one, and the advantages and disadvantages of an estate timber yard and a permanent repair staff are perpetually under discussion. I am not, on the whole, in favour of that method of dealing with repairs—at any rate unless strict accounts are kept. Apart from the estate where there is a large mansion and a continuous flow of repair work and odd jobs needing constant attention, I believe myself that the system, on the whole, is wasteful. It is often fruitful of jealousy among tenants on occasions when one farm has the estate staff and another has not ; it encourages tenants to let things slide, hoping that the estate staff will come along in due course. Moreover, in cases where the tenant is liable for the labour proportion of the cost of repairs, the charging of that proportion is sometimes overlooked or the tenant complains that the estate staff is expensive.

In my own practice I make it my almost invariable rule when the repairs are small to let tenants do the work themselves as the need arises. The landlord's proportion is then allowed in the next year's rent. If the work is large I get out a full specification and obtain estimates from local builders. Then I see that the cost is apportioned properly between the landlord and the tenant, and that the apportionment is duly agreed by the tenant before the work is carried out.

THE RENT RESTRICTIONS ACTS.

While still on the subject of estate management, I must turn for a moment from the country to the town, because I know that members entrusted with the management of working-class property are awaiting with interest the Report of the Departmental Committee on the Rent Restrictions Acts. The Report, on which any new legislation doubtless will be based, may or may not be public property by the time I deliver this address, but it will, at any rate, be a matter of topical interest. The Acts, failing other legislation

in the meantime, will expire on 24th June, 1938, in England and Wales, and on 28th May, 1938, in Scotland.

The Institution's Evidence.

The *précis* of evidence given on behalf of the Council to the Departmental Committee has already been published in the *Journal*. It recommends, as you already know, that the present upper limits of " Class B " houses should be reduced from £45 to £30 in London and from £35 to £25 elsewhere in England and Wales, so as to free houses between those limits from all forms of control ; that the remainder of the controlled " Class B " houses, that is to say, houses of a value between £20 and £30 in London and £13 and £25 elsewhere, should continue to be subject to their present restrictions (with decontrol on vacant possession) until June, 1941, when all restrictions would be removed ; and that " Class C " houses should remain with their present restrictions until the same date, after which decontrol on vacant possession should be restored. A number of recommendations were also made for amendments in the existing law, including, in particular, the removal of the necessity for obtaining the tenant's consent to expenditure on improvements carried out by the landlord pursuant to a statutory notice ; that a landlord should be entitled to possession if he undertakes to demolish the premises as the result of a dangerous structure notice, or if he *bona fide* intends to pull down and remodel the premises or to redevelop the site. It was also suggested that some limit should be placed upon the time allowed to the tenant for giving up possession after an order for possession has been made by the court.

Removal of Restrictions : The Need for Gradualness.

The Acts have become ingrained to some extent in our social fabric. In preparing our evidence we were faced with the fact that the removal of all restrictions next year, desirable as that might be from an estate management

aspect, would still have serious social consequences, and would, in the case of the lower category houses, cause undoubted, and in certain districts widespread, hardship to tenants with large families and small wages. For that reason, and after examining the reports we had received from members with large managements in all parts of the country, we felt that it was necessary to advocate a policy of gradualness in the removal of restrictions. We know that in the case of the larger types of "Class B" house the difference between the controlled and the decontrolled rents is comparatively small—about 10 per cent. to 15 per cent.—and that that difference increases fairly steeply as we go down the scale of values. If, as we have suggested, the larger types of "Class B" houses are taken wholly out of protection next year, we think that the present differences between the controlled and decontrolled rents of the smaller "B Class" houses will be sufficiently narrowed down to enable them in their turn to be taken *en bloc* out of protection in 1941. Numbers of them, in any case, will be taken individually out of protection between now and then as they fall into vacant possession. By 1941, also, we think that the time will have come to bring "Class C" houses—which at present remain controlled whether or not they fall vacant—into the "Class B" category so that they shall become decontrolled on possession.

We think that this plan will give fair notice to housing authorities of the need for estimating any extra housing requirements that may fall to be met in 1941 as the result of the removal or relaxation of restrictions on the smaller types of house as well as providing an incentive for the speeding up of housing programmes.

THE SCOTTISH AMALGAMATIONS.

My address would be incomplete without a reference to the considerable increase in the strength of the Institution in Scotland as a result of two amalgamations ratified by His Majesty's Privy Council on the 29th July of this year.

Beyond extending a cordial welcome to the members who have joined us from the Faculty of Surveyors of Scotland, I will say no more about them because my predecessor in this Chair, himself an outstanding quantity surveyor, explained to you in his address last year the great advantages to be derived from this fusion of quantity surveying interests north of the Tweed.

I will therefore confine myself to the other amalgamation, namely, that with the Scottish Estate Factors' Society, because the members who have come to us from that body practise in the same branch of the profession as I. In that branch the Institution, prior to the amalgamation, was not strongly represented in Scotland because, no doubt, of the existence there of a Scottish body already adequately covering the field. In unity, however, there is strength, and the influence and prestige enjoyed by the Institution, coupled with the experience of the Scottish factors in the management of the great Scottish estates, should be of benefit to all concerned, and not the least to the Scottish landowner. Since the first proof of this address went to print, the consent of the Privy Council has been given to a third amalgamation, namely, that with the Irish Quantity Surveyors' Association. I feel I cannot do better than end my address on a note of welcome to our new land agency and quantity surveying members from Scotland and Ireland and of the good hope which they bring for the future of our corporate welfare.

DISCUSSION.

Mr. JOHN M. THEOBALD (Past-President) said that the activities of the immediate Past-President were, out of a feeling of sympathy for the members, quite rightly severely restricted by the Council, but he was very glad, for personal reasons, that it fell to his lot to propose a hearty vote of thanks to the President for the very delightful and instructive Address that he had delivered.

With his own experience still a vivid memory, he had been sympathising with Mr. Cobb for the past few months in the

ordeal through which he imagined—and hoped—that Mr. Cobb was passing! Having heard him read the Address, however, he was forced to the conclusion that his sympathy had been utterly unnecessary and uncalled for, and that the President had enjoyed writing it as much as the members had enjoyed listening to it.

As the President had rightly pointed out, the activities of the many branches of the surveyor's profession were more than any one man could deal with, and personally he was glad that the President found that to be the case if it had resulted in his confining himself to the subject of agriculture, of which he had such an expert knowledge.

He was sorry to learn from such a great authority as the President the present unhealthy state of certain agricultural matters; especially was he surprised to learn that agricultural labour had deteriorated in spite of higher wages. That was a serious matter, because it would appear that, in the event of a state of emergency, which he shared the President's hope would never materialise, any increase of land fertilisation under Government legislation would be to a large extent handicapped.

He sincerely hoped that the President's comments on the dear food bogey would receive the attention that they merited. "Cheap food," at the cost of the bankruptcy of the farmers of this country and the danger of the starvation of our people in time of war, was a mistaken policy, and the sooner that was realised and remedied by those in authority the better, but unfortunately common-sense was not nearly so common as its title would imply.

Although a Cockney, he shared the President's dislike of "trust" farming. The farmer, as he was known to-day, was an integral part of the heritage that had been handed down to this generation. The farmer had been the country's stand-by throughout its history, and he for one wanted to see him get a fair deal, by whatever means it could be accomplished.

He was sure all the members shared the President's admiration for the individual owners of landed estates, but the wish that the President had expressed that individual ownership might long continue was, he feared, in the nature of a pious hope. The payment of death duties (perhaps the most unsound piece of legislation that ever found its way into the Statute Book) was making retention of landed estates by individuals a financial impossibility. It only needed two or three deaths in a comparatively short space of time and another landed estate was lost to posterity. The landowners as a class had always lived up to and realised their responsibilities, and their ultimate extinction, which appeared inevitable, was a crime which it would be hard to forgive.

The President's address was an epitome of agriculture by an

expert on his subject, and, as such, it would be referred to by students for many years to come. It was written with that human touch which was so characteristic of the President, and was redolent of the countryside and its vigorous atmosphere.

He hoped that neither the President nor the members would gauge his appreciation of the address by his apparent flippancy in speaking of it. That flippancy was far more apparent than real, and he shared with the members a very deep admiration for the masterly thesis which the President had delivered that evening.

With the greatest pleasure he proposed a very hearty vote of thanks to the President for his inaugural address.

Sir CHARLES BRESSEY, C.B. (Senior Vice-President), in seconding the vote of thanks, said that the very bluff and hearty address which the President had delivered had, he believed, given even more pleasure to the Londoners than to the countrymen. The countrymen had little to learn on agricultural subjects, whereas the Londoners had everything to learn on them. Mr. Theobald and he, if they pooled all their knowledge of agriculture, had just sufficient to fill five minutes; Mr. Theobald had occupied those five minutes, and that had completely exhausted their common stock!

Though knowing little about agriculture, he was convinced that the President had spoken on that subject as an expert. He judged of that in this way: when a Londoner or a townsman wrote about agriculture he filled many pages with digressions about amenities; everything was judged by the standard of amenities. If a man wanted to cut down his timber, the newspapers were full of letters pointing out that he was destroying the amenities of the country! If a man wished to plant timber, again came a spate of letters complaining that he was destroying the amenities of the country! A President who had not been brought up on the land as a yeoman would, he was sure, have dilated on the subject of amenities, which were becoming almost the obsession and the curse of the countryside. There should be a close season for amenities, and he hoped the President would make it his business in the country circles which he frequented to advocate that course. The craze started, of course, with the Dresden china shepherdess, frilled with artificiality, and now to a large number of townsmen the country was merely a place destined to grow primroses, bluebells and blackberries, to be picked by the tripper. The President, however, had rightly placed agriculture as the basic industry of this country, and there was no fact that it was more necessary to bring home to the townsman than that.

He believed that all Londoners like himself had appreciated

the freshness, the virility and the common-sense of the President's address. They were extremely fortunate to have as President one of that class to whom Henry V. appealed when he besieged Harfleur:—

“ And you, good yeomen,
Whose limbs were made in England, show us here
The mettle of your pasture.”

That evening the members had seen the mettle of the President's pasture and were thoroughly satisfied with it.

The motion was put, and was carried by acclamation.

The PRESIDENT, in returning thanks, said he was most grateful to Mr. Theobald and Sir Charles Bressey for the very kind way in which they had proposed and seconded the vote of thanks to him for his address, and congratulated them on the enlivening nature of their remarks.

He thanked all the members present for the patience with which they had listened to his address and for the kind way in which they had received it.

The meeting then terminated.

PAPER NO. 579.

PRACTICAL POINTS IN ARBITRATION.

By Sir Lynden Macassey, K.B.E., K.C., LL.D., B.Sc.
(Associate).

*Paper to be discussed at an Ordinary General Meeting of
the Chartered Surveyors' Institution on Monday, 6th
December, 1937.*

Some time ago I had the honour of reading before the Institution a paper on "Surveyors and the Law," in which I dealt incidentally with certain points connected with arbitration. This led to a considerable amount of correspondence between myself and a number of the junior members of the Institution. The result of that was I undertook to read another paper, more particularly directed to the principal questions connected with arbitration with which a surveyor, acting as arbitrator, is confronted. This is the promised paper.

There are many questions of law and policy which have to be considered by the legal advisers of any party contemplating arbitration, but this paper will not deal with them, nor will it discuss the still wider range of legal questions which may have to be considered by counsel or solicitors or other persons appearing before an arbitrator on behalf of a party to the arbitration. It is with questions that the arbitrator has to consider, that the paper is concerned.

The codes of law and the practice relating to arbitration which exist in England and Wales, Scotland and Northern Ireland differ materially. What is said in this paper relates exclusively to England and Wales. While much may be appropriate to the other parts of the United Kingdom, it

should not be assumed without enquiry that it does represent in them either arbitration law or practice.

I am confining my remarks solely to arbitrations of the type in which surveyors are usually appointed as arbitrators. Accordingly, therefore, I am making no reference to the practice which exists under the rules of certain special arbitration tribunals, as, for example, the London Court of Arbitration or the International Chamber of Commerce, nor to special procedure, as, for example, under the various district coal mines schemes which have been put into operation by the Coal Mines Act, 1930, under which mining engineers and surveyors do very frequently act as arbitrators. In the same way I am making no reference to any of the special types of commercial arbitration, especially under the rules of the great trading associations or federations, nor to the highly complicated arbitration practice which exists under some of the schemes for international trade or industrial arbitration. The paper is directed to the practical points which commonly arise in the type of arbitration with which surveyors have to be familiar, *e.g.*, compulsory purchase, valuation, building contracts, rating, and the like.

APPOINTMENT AS ARBITRATOR.

Ordinarily an arbitrator is appointed under what was called by the Arbitration Act, 1889, a "submission," and by the Arbitration Act, 1934, an "arbitration agreement," that is to say, "a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not." Accordingly, although it is the practice in some trade arbitrations to agree to appoint an arbitrator over the telephone, an arbitrator should always insist upon his appointment being in writing. A "submission," it is provided by Section 1 of the Act of 1889, is irrevocable unless it contains a provision that it may be revoked or unless leave to revoke is given by the

Court or a judge. An "agreement to refer" (*i.e.*, differences to arbitration) was always by law irrevocable. When there is an "agreement to refer," then, under Section 1 of the Act of 1889, once a dispute has arisen and an arbitrator has been agreed upon or validly appointed (it may be by some third party), there is a "submission" which becomes irrevocable.

It sometimes arises in practice that a party to a "submission" or an "arbitration agreement" declines to go on with the arbitration. If there is no provision for revocation in the "submission," the right course for the arbitrator to pursue is to tell such an one that he regards his appointment as arbitrator as irrevocable, and that he is under a legal obligation to proceed with the arbitration unless the party takes the necessary steps, by application to the Court, to get leave to revoke the "submission." That the Court will only give on good grounds shown. The arbitrator should give a reasonable time for an application to be made to the Court for leave of revocation, and if the party does not take advantage of it, then the arbitrator should proceed with the arbitration, even although the party abstains from attending. Under such circumstances there would be no danger of his award afterwards being set aside by the Court.

ACCEPTANCE OF APPOINTMENT.

It is always advisable, and in some cases essential, that when an arbitrator has received the original of an agreement signed by the parties to an arbitration, or letters from the two parties, appointing him as arbitrator, or has received a notification of his appointment as arbitrator by some person by whom it was agreed the appointment should be made, that he should at once communicate with the parties stating he has received the appointment and is prepared to act as arbitrator. If the arbitration is one under the Lands Clauses Acts (*i.e.*, not including the Acquisition of Land Act, 1919),

then the arbitrator should make the declaration provided for in the Lands Clauses Consolidation Act of 1845. I have known an awkward position arise through the inadvertent failure of an arbitrator sitting under that Act to make the declaration.

The next thing the arbitrator should do is to agree with the parties to the arbitration what his fee should be. The reason for this will be explained later. Here he is very often in a difficulty, as he will not, except in very ordinary cases, know the magnitude of the questions involved in the arbitration nor the amount of time or labour that he will have to expend in carrying the arbitration through. The best course is to agree a day fee for the time during which he will have to sit and hear the case, and also either a day fee or an inclusive fee for the time that will be involved before the hearing in preliminary meetings, viewing, &c., and after he has heard the case in going through all the evidence, documents, figures, statistics, &c., which is not infrequently the real burden of the arbitration, and also that he is to be entitled to employ the assistance of counsel or solicitors in drawing and settling his award. By law he is entitled to obtain such assistance, but it is better to get the whole arrangement agreed before he enters on the actual work of the arbitration.

PROCEEDINGS BEFORE HEARING.

Probably as soon after you are appointed arbitrator communications will begin to pass between you and the parties or their respective legal advisers. You must strictly observe this rule. When you receive a communication from one side you must send a copy of it to the other side, together with a copy of your reply. If the communication takes place over the telephone, which will frequently be the case in these days when all unnecessary formality is eliminated, you should make a careful memorandum of what was said to you over the telephone by one party or his legal adviser,

and also of your reply. You should then send your memorandum to the party or his legal adviser for confirmation, and when you have it agreed you should send a copy of the agreed memorandum to the other party or to his legal adviser as the case may be. You must always invariably follow the golden rule that you should not see one party or his legal adviser behind the back or in the absence of the other party or his legal adviser. If one side wants to see you, you should only agree to see them in the presence of the other side. If the other side is not prepared to come to the meeting, as sometimes happens with a reluctant party to an arbitration, then you should afterwards send him or his legal adviser a careful note of what took place at the interview.

Now commences the stage at which your competence as an arbitrator begins to be tested. It is probable that your appointment as arbitrator merely provides for your determining the differences which exist between the parties to the arbitration without giving any indication as to what those differences are. It frequently happens that both parties to the arbitration prefer to leave the matter in that completely general form, as it gives them an entirely free hand as to the way in which they will present their respective cases at the hearing, or perhaps because they cannot agree on a precise statement of what the differences are. On the other hand the respondent in an arbitration, especially if it relates to some important matter, may want to know precisely what is the case that is going to be made against him, and in the same way the claimant may desire to know what the respondent has to say by way of answer to the claim. In any event, unless the question is one of a simple and familiar kind, the arbitrator should certainly, if he is wise, try to get down with complete precision in black and white the issues he is to determine. There is full provision made by the Arbitration Acts, 1889 and 1934, to enable an arbitrator to do this, therefore he should in a case of any complexity, either on his own motion or at the request of any of the parties, hold a preliminary meeting.

He has power—and at such a meeting he should, if he thinks fit, exercise it—to order the claimant to deliver to the respondent points of claim and the respondent to deliver to the claimant his defence and any counter-claim he has to put forward, in each case with full particulars. It may happen that points of claim and defence are delivered but with insufficient particulars. The arbitrator has power to, and should, order full particulars. What such particulars should be is well explained by Cotton, L.J., in *Phillips v. Phillips* (1878), 4 Q.B.D. 127, at p. 139:—

“What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they will have to meet with when the case comes on for trial.”

The learned Lord Justice was speaking of particulars of the claim. The same thing applies to particulars of the defence or of a counter-claim. The arbitrator will have to fix a time within which the points of claim or particulars thereof are to be delivered to the respondent, which must be reasonable, having regard to the time and difficulty involved in the claimant getting out the particulars and also fix the time within which the defence or particulars thereof are to be delivered by the respondent to the claimant. Obviously the time for delivering the defence or particulars thereof will run from the time at which the claim or particulars of the claim have been delivered.

The next question which may arise is as to discovery of documents. In many types of complicated arbitrations it is essential that one side, or both, should be informed what documents relating to the questions to be tried are in the possession of the other party. One party can only find out what those documents are if the other party makes out and supplies to him a list of the documents. That is commonly ordered in the trial of an action in the Courts. Whether or not an arbitrator has power to order either or both parties before him, to make and supply a list of documents has never

been directly settled. I myself incline to the view that the arbitrator has that power under the general words of Clause (f) of the First Schedule to the Act of 1889, and when sitting as arbitrator I have frequently assumed and exercised the power. Now, however, under the Arbitration Act, 1934, a new procedure has been created, under which a party to an arbitration can be compelled by the Court to make a list of documents. By Section 8 (1) and paragraph (2) of the First Schedule to that Act the Court may make an order on any party to an arbitration calling upon him to make a list of documents. The most convenient procedure in my experience for putting that machinery into motion is for a party to an arbitration desiring to obtain from the other party a list of documents is for him to appear before the arbitrator at a preliminary meeting to which the arbitrator will summon the other party and for him to make out his case for being supplied with such a list. The arbitrator, after hearing both parties, can make an order on either or both parties to give a list of documents, and then, if any party on whom such an order is made objects to getting out a list of documents, the party who has applied for the order can go to the Court and ask it to make an order under the above provisions of the Act of 1934, and the Court can enforce its order.

Often it happens that one side or the other desires to administer interrogatories to the other side for that side to answer on oath, in order to prove some material fact. For a long time it was doubtful whether an arbitrator had any power to make an order on either party to answer interrogatories on oath in arbitration proceedings. It was, however, settled in the case of *Kursell v. The Timber Operators and Contractors, Limited* (1923), 2 K.B., 202 ; 92 L.J., K.B. (607), that an arbitrator had the same power as a master had in an action in the Court raising the same issues. But though the arbitrator has that power, he cannot enforce it as can a master in the Court. The only really effective way he had of enforcing it was by mulcting a party in costs who

refused to answer interrogatories. Now, however, if an arbitrator orders interrogatories and the party against whom the order is made refuses to answer them, the other party may apply to the Court under the Act of 1934 and get an order from the Court for the answer of those interrogatories, or any other interrogatories of which the Court approves, and the Court can enforce its order.

When a list of documents has been given by a party, the other party will probably want to inspect them and the arbitrator should make an order for inspection subject to the usual legal objections to production of documents as recognised in the Courts, *e.g.*, legal professional privilege, criminatory or penal, disclosing the party's evidence, documents irrelevant, or not necessary for disposing of the questions at issue, &c. The place at which he would order the documents to be produced would generally be the office of the party's solicitor. The arbitrator's power to order production of documents is generally considered to be derived from paragraph (f) of the First Schedule to the Act of 1889. If the party objects to produce documents at the office of his solicitors, the arbitrator can follow one or two courses. He can order him to produce them before him at a meeting to which both parties are summoned, under the penalty that if he does not do so he will be precluded from putting the documents in evidence at the hearing unless, following the principle of Order XXX., r. 15, of the Supreme Court, the documents relate only to the party's own title, he being in fact a defendant in the arbitration, or he has some other reason or excuse for non-production, which the arbitrator thinks sufficient ground for non-compliance with the order to produce. I myself, however, would hesitate to recommend an arbitrator to preclude a party from putting a material document in evidence because he had not complied with a notice to produce it. I should leave it to the other party to the arbitration to go to the Court and get an order for its production under the Act of 1934, which is a much safer course.

It sometimes happens that a recalcitrant party is not prepared to allow the other party to inspect property of his which is the subject matter in whole or in part of the arbitration. I have known great difficulties created by such refusal. Under paragraph (f) of the First Schedule to the Act of 1889 it has been generally assumed that an arbitrator had power to order such inspection under the general power to order the parties to "do all other things which during the proceedings on the reference the arbitrators or umpire may require." There have been cases where such an order has been ignored or defied by some obstinate party. The difficulty so created, which is a real one, is now met by the Act of 1934, and if the arbitrator makes an order on one party for inspection of property, which is the subject of a dispute, and that order is ignored, the other party may apply to the Court for a similar order under the First Schedule to the Act of 1934, and the Court has power to make it and to enforce it.

It happens in connection with some arbitrations, particularly those in which surveyors with a mining practice are concerned, that evidence is required from witnesses who cannot be conveniently brought before the arbitrator, particularly in the case of a witness who may be abroad. It was decided in the cases of *Shaw & Ronaldson, In re* (1892), 1 Q.B. 91; *Dreyfus & Sons and R. & N. Paul, In re* (1893), 9 T.L.R. 358, that for the purposes of an arbitration neither an arbitrator nor the Court had any power to order evidence to be taken on commission. This serious defect in arbitration procedure has now been made good by the Act of 1934 and under paragraph (4) of the Schedule to that Act the Court may make an order for the examination on oath of any witness before an officer of the Court, or any other person, and may also order the issue of a commission or make a request for the examination of a witness or witnesses out of the jurisdiction. And the evidence so taken can be used before the arbitrator.

It may also happen in arbitrations, just as it happens in the Court, that claims may be made of such a character or

by such a party that the other party against whom the claim is made may be put to very considerable expense if the claim fails, which he will have not much likelihood of recovering if an order for costs is made against the party making the claim. It was decided in the case of *In re Unione Stearinerie Lanza & Wiener* (1917), 2 K.B., 558, that an arbitrator had no power to require any party before him to give security for costs unless there was an express provision empowering him to do so in the "submission." Cases have come within my experience where it was only right that an arbitrator should have had power to order security for costs. Although no such power has yet been conferred upon arbitrators, provision is made by the Act of 1934 by which one party to an arbitration can apply to the Court for an order on the other party to give security for costs, and the Court may in a proper case make and enforce such an order.

An important matter that should be settled at a preliminary meeting in connection with arbitrations of complexity is whether shorthand notes of proceedings at the hearing are going to be taken or not. An arbitrator must remember that he has no power to employ a shorthand writer and make the parties pay for that. His duty is to make himself a careful note in writing of all material evidence given by witnesses, both in examination, cross-examination and re-examination. He is, however, quite entitled to express the view, and I have often done it, that, having regard to the nature of the case, he thinks it desirable that shorthand notes should be taken, if for no other reason than that the expenses of the protraction of the hearing, when he has to make full longhand notes himself, may exceed the expense of taking and transcribing shorthand notes. If the parties agree to have a shorthand note taken and transcribed, then the arbitrator should get a memorandum signed in writing by or on behalf of the parties, embodying an agreement to pay in prescribed proportions the costs of taking and transcribing the shorthand notes, or else to leave the costs of the shorthand notes to the arbitrator to deal with as part

of the costs of the arbitration, when he can decide by whom the costs of the shorthand notes should be paid, whether by the unsuccessful party or by both parties in equal shares, or in any other way he thinks fit. This is important because if the successful party afterwards had to tax in the Court against the unsuccessful party the costs of the arbitration, he will not be entitled to include in them the cost of shorthand notes even although the solicitors of both parties may have agreed that the shorthand notes should be part of such costs, unless the Court, after going into the matter, so direct. I have known very considerable difficulties arise in regard to the cost of shorthand notes, all of which can be avoided if the arbitrator gets the matter made clear at a preliminary meeting.

There is another matter in respect of which an arbitrator, though he can make no order, should put all possible pressure on the parties at a preliminary meeting. That is, to agree, as far as they can, all figures, as figures only, before the hearing. It is a most unsatisfactory business to have time wasted by elaborate examination-in-chief and cross-examination about figures which could all have been agreed between reasonable people before the hearing comes on. An arbitrator should not hesitate to say that he will take into consideration any unreasonable refusal to agree figures as figures when he is dealing with the costs of the arbitration.

There is another source of dispute which ought to be settled at a preliminary meeting—how the parties are going to be represented at the hearing. If one party desires to appear at the hearing personally, the other party ought not to be allowed to appear by solicitor or counsel unless he has previously declared his intention so to do. I have always regarded it as the proper course for an arbitrator to follow when one party appears personally at the hearing and the other party, without giving any intimation, appears by solicitor or counsel, to give the party who appears personally, if he desires it, an adjournment in order to enable him to procure legal assistance. In fact, I am not at all sure

that if that course is not followed, the party appearing personally might not succeed afterwards in getting the Court to set aside the award on the ground of the misconduct of the arbitrator. It is therefore essential that this important matter should be settled at a preliminary meeting.

The final point to be settled at a preliminary meeting is when and where the hearing is to take place. It should be settled who is to secure the room for the hearing. I have known everyone to turn up for the hearing at the place arranged and find no room reserved, the parties thinking that the arbitrator was securing it and the arbitrator thinking the parties were doing it. As to the date of the hearing, the arbitrator will naturally have regard to the convenience of the parties, but he is frequently faced with this position—one party most anxious to expedite the hearing and the other party either unable or unwilling to do so. The arbitrator should therefore at the preliminary hearing endeavour to meet reasonably the real exigencies of both parties and fix a date for hearing which does so. It will always be open to him to adjourn the hearing if a proper case is made before him at a further preliminary meeting by a party to the arbitration. He has complete power over the procedure to be adopted in connection with the arbitration.

And this question should also be settled at the preliminary meeting—whether the public, and especially the Press, are or are not to be admitted to the arbitration proceedings. The position is that an arbitration tribunal is a private tribunal, and neither the public nor the Press have any right of admission if their presence is objected to by either party. It may be—and I have known such cases—that both parties are anxious and have agreed that the public and the Press should be admitted, but where the arbitrator was of opinion that it would not be conducive to the proper disposing of the case if that were done. In that event the arbitrator is quite entitled, notwithstanding the agreement of the parties, to refuse to admit either the public or the Press.

PROCEEDINGS AT THE HEARING.

There is a popular notion that arbitrators are not bound by the same rules of procedure or of evidence as are the Courts of Law. That is, however, a misconception. While an arbitrator is not bound so strictly as to procedure as are Courts of Law, he would be wise to adopt substantially the same procedure as the Courts. An arbitrator is, however, bound by the same rules of evidence as the Courts. That is well settled in the case of *In re Enoch & Zaretsky, Bock & Co.* (1910), 1 K.B., 327, and other cases referred to in that case. The only deviation which the law recognises from the strict obligation of an arbitrator to observe the same rules of evidence as the Courts is where it is expressly stated in the "submission" or "arbitration agreement" that he has been appointed as an arbitrator to determine a question from his own skill and knowledge of the subject. In such a case an arbitrator may be justified in saying "I really do not require to listen to witnesses. I can decide the matter from my own knowledge and experience."

Accordingly, then, the ordinary procedure at an arbitration will be the same as the procedure in an action in the Court. The party upon whom the burden of proof lies in the first instance will begin. He will generally be the claimant, and he or the counsel or solicitor representing him will open his case by a speech, after which he will call his witnesses, who will be examined-in-chief, cross-examined and re-examined in the ordinary way, and he will also put in evidence any documents which he requires to support his case. When in this way the claimant has finished his case, then the case for the respondent will begin, and he or his counsel or solicitor will make a speech explaining his case, and call his witnesses, who will be examined-in-chief, cross-examined and re-examined in the usual way, and he too will put in evidence any documents he requires in support of his case. At the conclusion of his evidence the respondent or those representing him will sum up his whole case, and then the claimant or those representing him has the right

of general reply, which is the last word in the case. Sometimes it happens that the respondent does not desire to call any evidence, and is content to reply upon either the absence of evidence called by the claimant or his cross-examination of the claimant's witnesses. In that event the respondent must state at the conclusion of the claimant's case that he intends to offer no evidence, whereupon the claimant or those representing him has the right to sum up his case, after which the respondent or those representing him replies upon the whole case and so has the last word.

There is frequently a dispute as to whether the respondent is entitled to the last word. What happens is that he announces that he intends to call no evidence, and then it is contended by the claimant that, although he is proposing to call no witnesses, yet he has put in evidence some document or part of a document which disentitles him to have the last word and gives that right to the claimant. If the respondent has in fact put any document or part of a document in evidence, then, even although he were to call no witnesses, that would disentitle him to the last word. This is a dispute which an arbitrator has frequently to decide. It often involves highly technical considerations whether a respondent, although he is calling no witnesses, has or has not put in evidence. If he has, it is clearly the ordinary right of a claimant to have the last word ; and, indeed, it might be essential, if justice is to be done, that he should have the right of dealing with any evidence which the respondent has put in. Hence, if an arbitrator has any doubt on the matter he will be acting wisely in saying that whether, according to the strict rules of procedure, the claimant has or has not the technical right to the last word, he intends to give him an opportunity of a reply on the respondent. By doing so nobody will be prejudiced.

At the hearing documents may be put in evidence, and the arbitrator should insist that the original document is always put in by a party unless the other party agrees to accept a copy, and the arbitrator should mark each document put in—for example, " Document " or " Exhibit (A)

“(B) (&c.) put in by the claimant ” or respondent as the case may be, and the arbitrator should sign his name on the document with the date. This is necessary in case the documents have afterwards to be annexed to the award.

When the first witness is called at the hearing, the question will arise whether the witnesses are to be sworn or not. An arbitrator has power under Section 7 (a) of the Act of 1889 to administer an oath to or to take the affirmations of witnesses. It is not, however, compulsory on an arbitrator to do so. The safest practice is, unless both parties agree to the contrary, for an arbitrator to put every witness on oath or take affirmations from them, and in that case he should insist that when the witness is being sworn, or an affirmation is being taken from him, proper silence and order are observed in the room, as is the case in a Court of Law.

It is always a difficult point for an arbitrator to attempt to curtail the evidence which the parties desire to lay before him, especially if he is not a legal arbitrator, though he may often be tempted to do it. In the case of *Williams v. Wallis & Cox* (1914), 2 K.B., 478, it was held by a Divisional Court that if the effect of an arbitrator refusing to hear, or excluding evidence, is that he thereby declines to decide the very issue that was submitted to him, that may amount to misconduct which would entitle a party to have the award set aside. While, however, an arbitrator should not attempt to exclude evidence that appears to be in any way relevant, he is not bound to sit and hear evidence repeated to an extent which merely constitutes a waste of time, and being in control of the proceedings he is always entitled to intervene and say that he thinks on a particular point he has heard enough. On the other hand, if an arbitrator allows evidence to be given before him, which according to the rules of evidence is entirely inadmissible, and that evidence goes to the root of the question submitted to the arbitrator for determination, it is quite likely that the Court, if it thought that the arbitrator had acted on

or had been influenced by such evidence, would set aside his award on the ground that he had been guilty of legal misconduct. Whether evidence is admissible or not may raise difficult and complex questions on which even the views of trained lawyers may differ. If, then, there is a dispute before an arbitrator as to whether evidence is or is not admissible and no agreement can be arrived at between the parties as to whether the evidence should or should not be given, and it goes really to the root of the question before the arbitrator, his best course is to say to the parties that he intends to adjourn the hearing, and will state a case for the Court to decide on the application of the party desirous of putting in the evidence, whether the evidence is admissible or not. If in this way he gives the party desirous of tendering the evidence an opportunity of having the matter decided by the Court and the party does not take advantage of that offer, he will find it practically impossible to get the award set aside, even were he able to show that the arbitrator had been wrong in admitting the evidence.

It frequently happens in arbitrations that documents are put in evidence, and it is the duty of the arbitrator under the Stamp Act, 1891, to see whether the documents have been properly stamped. If they have not been properly stamped it is the duty of the arbitrator to require the party putting the documents in evidence, to pay to him the necessary duty and penalty before he receives them in evidence, and the arbitrator will afterwards have to remit the duty and penalty to Somerset House. This the arbitrator is bound to do even although no objection is taken by any party at the arbitration to a document tendered in evidence by the other party, being either not stamped or insufficiently stamped.

There are certain other points of practice an arbitrator should bear in mind. It is a somewhat prevalent idea that arbitrators are entitled to call witnesses themselves on to questions of fact. But it is now settled that no arbitrator

has got any such power unless it has been expressly given to him by the submission or arbitration agreement. If he does so without the consent of the parties, his award will be set aside. That is very clearly explained by Lord Justice Moulton in *In re Enoch & Zaretsky, Bock & Co.* (1910), 1 K.B., 327, at p. 333.

Sometimes also it happens that one of the parties to an arbitration does not turn up at the appointed time and place of hearing. Under those circumstances an arbitrator would be wise not to proceed with the hearing but to adjourn it and warn the absent party that the proceedings have been adjourned because of his absence. He should then fix another day, time and place for the hearing after communicating with the absent party. If on a second occasion that party does not turn up, then the arbitrator should proceed with the hearing in his absence.

Arbitrators are supposed to decide cases as a result of their own judgment on the evidence before them. Hence they must not delegate their duties of decision to some third party, for example, some expert adviser. That being so, it is inadvisable for arbitrators to consult third parties on the matters submitted to them for decision under any circumstances which might lend complexion to the suggestion that they really adopted and acted upon the third party's advice or opinion. An arbitrator is, however, entitled to get third parties to perform for him what the law calls "acts of ministerial character," as, for example, taking measurements or making up, or checking accounts and matters of that sort. But one class of assistance lay arbitrators are always entitled to obtain, that is, to take the advice of solicitors and counsel in regard to the conduct of the arbitration or the drawing of the award. The leading cases in which this has been decided are: *Dobson v. Groves* (1844), 14 L. J., Q.B. 17, per Lord Denman, C.J., at p. 21; *Threlfall v. Fanshawe* (1850), 19 L. J., Q.B. 334, per Coleridge, J., at p. 336, and *Louis Dreyfus & Co. v. Arunachala Ayya*, L. R. 58, I.A. 381. When, as some-

times happens, a case is drawn up by a solicitor on behalf of the arbitrator and submitted to counsel for an opinion, then, when that opinion is obtained, the arbitrator ought to show both the case and the opinion to the parties. If it should appear that he has obtained an opinion based on a wrong statement of facts and has acted upon it, the award might be set aside. That appears to be the decision in *Hare, In re* (1839), 6 Bing, N.C. 158.

Sometimes in the course of an arbitration one party or both parties may ask an arbitrator to state a case for the decision of the Court on some question of law. It may well be that the question of law goes to the root of the matter which the arbitrator has to decide. Under such circumstances he ought certainly to state the case, and adjourn the hearing until the Court has given a decision. It may avoid much waste of time in taking evidence. On the other hand it may happen, and does, not infrequently, that a party to an arbitration really from motives of delay or obstruction presses for a case to be stated on some point of law which the arbitrator may regard as quite immaterial. If the party is insistent, then the arbitrator's best course is to offer to adjourn the hearing and give the party a reasonable time to apply to the Court to make an order on him as arbitrator to state a case under Section 9 of the Act of 1934. If the point of law is immaterial or frivolous, the Court will know how to deal with the application.

Before the passing of the Act of 1934 an arbitrator was only entitled to make one award, which had to be a final award. But circumstances often do arise where it is very desirable that an interim award should be made, as, for example, in respect of certain questions on which an immediate decision is desirable, postponing the award on the remaining questions until they can be properly tried. Now under Section 7 of the Act of 1934, an arbitrator may, if he thinks fit, make an interim award. This in practice will often be found a useful course to adopt.

A word may perhaps be said in regard to the statement by

arbitrators of special cases for decision by the Court. They may be either special cases stated on a question of law arising in the course of the hearing (under Section 9 (1) (a) of the Act of 1934), or the award itself or part of the award stated in the form of a special case (under Section 9 (1) (b) of the same Act). It is generally imprudent for an arbitrator to attempt himself to formulate the questions in either of these two cases which the Court has to decide. He should therefore endeavour to get the parties to agree on the question or questions and to hand them in to him in writing, signed by each party or his representative. If, as often occurs, the two sides cannot agree on a statement of the question, then the best course for the arbitrator to pursue is to ask each side to let him have in writing the question or questions which they want the Courts to decide, signed by the party or his representative, and also similarly signed questions of fact on which they want the arbitrator's findings. In the case which the arbitrator states for the decision of the Court he will then insert either the agreed question or questions, or, if none can be agreed, then those submitted in writing by the two sides, and the questions of fact submitted to him and his findings in regard to them.

THE DRAWING OF THE AWARD.

When the award is of at all a complicated character, an arbitrator in his own interests should have it drawn up by a solicitor and, if necessary, settled by counsel. That he is entitled to do. It is not necessary to adopt the formal and archaic phraseology in which in the past awards have been drawn, for example, "To all to whom these presents shall come greeting" or "Know all men by these presents." The time has gone past for that sort of thing. Any form of simple award will do which clearly states the question or questions submitted to the arbitrator for decision and his decision upon them. He is an imprudent arbitrator who gives his reasons. That frequently opens

the door to litigation. While it is obligatory under many codes of foreign law, it is not obligatory under the arbitration law of England and Wales. The parties do not want the door opened for litigation. What they do desire is a quick and final determination of the differences. Now with the full provision made by the Act of 1934 for the statement of questions of law in the course of the arbitration proceedings there is no reason why any arbitrator should set out his reasons in his award.

It may happen, and sometimes does, that after the arbitration proceedings are closed a party may apply to have the award stated in whole or in part as a special case for the decision of the Court. If such an application is made by one party the arbitrator should communicate with the other party, and if he objects and the arbitrator thinks the matter sufficiently important, he can hold a further meeting between the parties for the question to be discussed. He has, as mentioned above, the power to state his award in whole or in part in the form of a special case. If he thinks that there is no substantial reason for stating the award either in whole or in part as a special case, his right course is to communicate with the parties saying so, and stating that he will delay the making of his award until the party desiring to have it in whole or in part stated as a special case, can expeditiously apply to the Court for an order on him, under Section 9 of the Act of 1934, so to state his award, but he should not allow such a party to hold up the making of the award indefinitely.

There is an important technique which applies to the drawing of an award stated in the form of a special case. The questions which the parties desire the Court to decide, or which the Court may have ordered the arbitrator to submit to it for decision, are of course inserted. Also, any questions of fact on which the parties have asked the arbitrator to give a finding, together with the arbitrator's findings thereon, and any other findings of fact which the arbitrator may himself think will be of assistance to the Court in deciding the questions submitted to it. Now the arbitrator must

remember that the Court may decide each question either in the affirmative or the negative. Therefore he must give an award as against each possibility, *e.g.*, "If the Court decides Question No. 1 in the affirmative, then I award as follows . . . On the other hand, if the Court decides Question No. 1 in the negative, then I award So-and-So . . ." It should be remembered that under these circumstances there will be no award until the Court has given its decision. So to guard against the contingency of a party who has taken the initiative of getting a question stated for the decision by the Court, never setting down the case for the Court's decision, the arbitrator should always insert a clause somewhat as follows: "In the event of this award, so far as stated in the form of a special case, not being set down for hearing by the Court within (say, three months) from the date of this award, then I award as follows: . . ." By so doing a final award is ensured.

Lastly, in connection with an award stated in the form of a special case, a clause should be inserted that all documents enumerated in a schedule to the award and as marked and signed by the arbitrator should be deemed to be annexed to and incorporated with the award.

Then the next most important matter to be dealt with in the award is the question of costs. Under the First Schedule to the Act of 1899 the costs of the arbitration and of the award are in the discretion of the arbitrator, who may direct to and by which party and in what manner those costs or any part thereof shall be paid, and he may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid by one party to another as between solicitor and client. This provision applies so far as express provision is not made in respect of costs, as, for example, under the Lands Clauses Acts.

The arbitrator has therefore to decide and award whether the two parties to the arbitration are each to pay their own costs or whether the successful party is to pay not merely his own costs but also the costs of the other party, and that should be clearly stated. He has further to decide and

award who is to pay, or in what proportions the two parties are to pay, his fees for and costs of the preliminary hearings and the hearing of the case and making the award, and also the expenses of hiring of the room in which the hearing took place and any other costs or expenses to which he has been put, and he should give in his award a clear direction in regard to these various things. He has further got to remember that he has no right to give any direction as to the cost of shorthand notes unless by agreement between the parties he has been left to deal with those costs as part of the general costs of the arbitration or in some other agreed way, in which event he ought, of course, to give an award in regard to them.

When dealing with the costs he has also to remember that he may himself tax or settle the amount of costs to be paid by each of the parties, or, on the other hand, having given his decision in regard to costs, he may direct that the costs shall be taxed by an officer of the Court. On this matter he ought first of all to take the views of the parties and, if they agree, to give effect to them. On the other hand, if they do not agree, then he can himself tax the costs as he thinks right, but a wise arbitrator will certainly leave the troublesome and technical matter of taxation of costs to an officer of the Court, who will always tax the costs according to the directions contained in the award, that is to say, according as the arbitrator directs them to be taxed either on the solicitor and client basis or on the ordinary party and party basis.

In regard to the arbitrator's own fees, the ordinary course of procedure is that the arbitrator fixes the amount of them on the basis of any agreement between him and the parties, or, if there is no such agreement, then on such reasonable basis as he thinks right. It is generally undesirable and unnecessary to insert the amount in the award. When he communicates with the parties announcing that his award is ready to be taken up, he will intimate the amount of his fees, costs and expenses, and the party taking up the award

will usually pay them. If his fees were agreed by the parties on his appointment no question can well arise. Remembering that the party who takes up the award may not be the party who is ordered by the award to pay the arbitrator's fees, costs and expenses, the award should contain a clause to the effect that if any party pay any sum which under the award is directed to be paid by the other party, the party paying such sum shall be repaid it by the other party. One or both of the parties to an award may, if the arbitrator's fees have not been agreed, take objection to the fees which he charges as being excessive. Before the Act of 1934 was passed that raised a difficulty. An arbitrator would not hand over the award until his fees were paid and the parties would not pay the fees to take up the award. Provision is now made for that contingency by Section 13 of the Act of 1934, which provides that if in any case an arbitrator refuses to deliver his award, except on payment of the fees demanded by him, the Court may, on application by a party, order the arbitrator to deliver the award to the applicant on payment into Court by the applicant of the fees demanded. And the Court may further order that the fees demanded shall be taxed by the taxing officer of the Court, and that out of the money paid into Court, there shall be paid out to the arbitrator by way of fees such sum as may be found reasonable on taxation, and that the balance of the money, if any, shall be paid out to the applicant. This section, however, is provided not to apply where the fees have been fixed by a written agreement between him and the arbitrator. The section provides for the protection of the arbitrator as he is to be entitled to appear and be heard on any taxation of his fees under the section.

Lastly, when an award is signed and before it is taken up, do not omit to have it stamped, in all ordinary cases with a 10s. stamp, and then write to the parties and say it is ready to be taken up on payment of your fees, costs and expenses, giving details.



I have tried to confine this paper to the matters with which an arbitrator has to deal in any arbitration of ordinary importance. It contains sufficient practical guidance to enable a surveyor, entering on the conduct of an arbitration for the first time, without experience of arbitration practice, to discharge his duty with competence and efficiency, and in an independent and impartial manner, as required by law.